Sarkawi bin Sadijo (t/a Jojo's Musical and Promotion House) v BMG Music (M) Sdn Bhd & Ors

HIGH COURT (JOHOR BAHRU) — CIVIL SUIT NO 22–175 OF 1995
ABDUL MALIK ISHAK J
6 FEBRUARY 1996

***Civil Procedure** — Injunction — Interlocutory injunction, application for — Whether there was a valid cause of action — Whether applicant had locus standi to do so — Whether there was a serious question to be tried — Whether the claim was frivolous and vexatious — Whether applicant had exhibited all the necessary evidence to prove the case*

The plaintiff applied for several injunctions against the defendants. Pending the hearing of the application, the court granted the injunctions on 19 August 1995 as the parties agreed that the status quo of the parties should be maintained. The question before the court now was whether the injunctions should be maintained or otherwise. The plaintiff claimed that the second, third, fourth and fifth defendants, through the influence of the first defendant, had breached their written agreements with it ('the agreements') to bind themselves exclusively to it to make sound recordings of music works. The second, third, fourth and fifth defendants contended that they had legally repudiated the agreements. The defendants' counsel further contended that the plaintiff firm did not exist when the agreements were entered into between the parties which meant that the plaintiff had no locus standi in the matter and that there was actually no evidence to determine whether the injunctions could be applied for. This was because the plaintiff's counsel had failed to exhibit the agreements during the trial.

Held, striking off the application:

(1) An applicant asking for an interlocutory injunction, must first and foremost have a cause of action before a judge will grant him any remedy. This was especially so when the court was asked to grant an interlocutory remedy without having the benefit of a full trial. If the plaintiff could not show to court that he had a valid cause of action his application must surely fail. On the other hand, if the plaintiff could show that he had prima facie a valid cause of action, he need not go on at this stage to show that he would definitely succeed in that cause of action. He needed only to show that there was a serious question to be tried (see p 528G–I; *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193, *RCA Sdn Bhd v Pekerja-Pekerja RCA Sdn Bhd & Ors* [1991] 1 MLJ 309 and *Associated Newspapers Group v Insert Media Ltd* [1988] 2 All ER 420 followed).

(2) The phrase 'a serious question to be tried' meant that the court must be satisfied that the claim was not frivolous or vexatious. Implicit in that phrase, the applicant must show that he had a valid cause of action (see p 529B–C; *American Cyanamid Co v Ethicon* [1975] 1 All ER 504 and *Hong Kong Vegetable Oil Co Ltd v Malin Sirinaga Wicker & Ors* [1978] 2 MLJ 13 followed).

(3) A party might have a cause of action but if he had no locus standi to initiate the action the court would, without hesitation, dismiss the action in limine. Looking at the facts of the present case, the plaintiff firm came into existence after the agreements were made. Clearly it had no locus standi to pursue the matter against the defendants and, consequently, there was no bona fide serious issue to be tried (see p 530A, C; *Government of Malaysia v Lim Kit Siang* [1988] 2 MLJ 12 followed).

(4) On the totality of the facts, a bona fide serious issue had not been disclosed as the very substratum of the plaintiff's case had not been exhibited in the plaintiff's affidavits. In fact, the plaintiff's counsel realized towards the end of his submission that he had inadvertently omitted to exhibit the agreements between the plaintiff and the second, third, fourth and fifth defendants which he admitted was an oversight on his part. Therefore, the plaintiff's case failed (see pp 530H–I, 531A).

Per curiam:

The weight to be attached to a statement of belief in an affidavit that depends upon sources and grounds other than the knowledge of the deponent will depend upon the nature of those sources and grounds. An original source will normally carry more weight than an intermediate source, and where original sources are known, they must be identified. It does not follow that intermediate sources cannot be referred to or relied upon. Ultimately, it must be for the court to weigh all the material in order to decide whether an applicant has made out his case for the interlocutory relief sought (see p 532E–F; *Deutsche Ruckversicherung AG v Walbrook Insurance Co Ltd* [1994] 4 All ER 181 followed).

[Bahasa Malaysia summary

Plaintif memohon untuk beberapa injunksi terhadap defendan-defendan. Sementara menunggu perbicaraan permohonan itu, mahkamah membenarkan injunksi itu pada 19 Ogos 1995 kerana pihak-pihak berkenaan bersetuju untuk mengekalkan status quo. Persoalan di hadapan mahkamah ini, adalah sama ada injunksi itu patut dikekalkan atau tidak. Plaintif menuntut bahawa defendan kedua, ketiga, keempat dan kelima, melalui pengaruh defendan pertama, telah memungkiri perjanjian bertulis yang telah dimasuki dengannya ('perjanjian itu') untuk mengikatnya secara eksklusif untuk membuat rakaman skor muzik. Defendan kedua, ketiga, keempat dan kelima pula mempertikaikan bahawa mereka telah mengingkari perjanjian bertulis itu secara sah. Peguam defendan juga mempertikaikan bahawa syarikat plaintif tidak wujud semasa perjanjian bertulis itu dimasukki oleh pihak-pihak yang berkenaan yang bermakna plaintif tidak mempunyai locus standi dalam perkara ini dan bahawa tidak ada keterangan yang menunjukkan bahawa injunksi itu boleh dipohon. Ini adalah kerana peguam plaintif gagal mengeksibitkan perjanjian itu semasa perbicaraan.

Diputuskan, membatalkan permohonan itu:

(1) Seorang pemohon injunksi interlokutori mesti pada mulanya mempunyai kausa tindakan sebelum seorang hakim dapat memberikan sebarang remedi kepadanya. Ini adalah terutamanya apabila mahkamah diminta memberikan remedi interlokutori tanpa manfaat perbicaraan yang penuh. Jika plaintif tidak berupaya menunjukkan kepada mahkamah bahawa dia mempunyai kausa tindakan yang sah permohonannya akan tentunya gagal. Akan tetapi, jika plaintif dapat menunjukkan bahawa dia mempunyai kausa tindakan yang sah secara prima facie, dia tidak perlu menunjukkan bahawa dia sememangnya akan berjaya dalam kausa tindakan itu. Dia hanya perlu menunjukkan bahawa terdapat persoalan serius yang harus dibicarakan (lihat ms 528G–I; *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193, *RCA Sdn Bhd v Pekerja-Pekerja RCA Sdn Bhd* [1991] 1 MLJ 309 dan *Associated Newspaper Group Plc v Insert Media Ltd* [1988] 2 All ER 420 diikut).

(2) Frasa iaitu 'terdapat persoalan serius yang harus dibicarakan' bermakna bahawa mahkamah harus berpuas hati bahawa tuntutan itu bukan remeh atau menyusahkan. Tersirat dalam frasa itu adalah bahawa pemohon harus menunjukkan bahawa dia mempunyai satu kausa tindakan yang sah (lihat ms 529B–C; *American Cyanamid Co v Ethicon* [1975] 1 All ER 504 dan *Hong Kong Vegetable Oil Co Ltd v Malin Sirinaga Wicker & Ors* [1978] 2 MLJ 13 diikut).

(3) Satu pihak mungkin mempunyai kausa tindakan tetapi tanpa locus standi untuk memulakan tindakan tersebut, mahkamah akan, tanpa kelengahan, menolak tindakan itu in limine. Melihat fakta dalam kes ini, syarikat plaintif ditubuhkan selepas perjanjian dibuat. Jelas sekali, ia tidak mempunyai locus standi untuk membawa perkara ini melawan defendan-defendan dan, oleh itu, tidak terdapat isu serius bona fide untuk dibicarakan (lihat ms 530A; *Government of Malaysia v Lim Kit Siang* [1988] 2 MLJ 12 diikut).

(4) Pada keseluruhan fakta kes ini, isu serius bona fide tidak terdapat kerana inti pati kes plaintif tidak dieksibitkan dalam afidavit plaintif. Sesungguhnya, peguam plaintif juga menyedari diakhir penghujahannya bahawa dia telah dengan tidak sengaja terlupa mengeksibitkan perjanjian bertulis di antara plaintif dan defendan kedua, ketiga, keempat dan kelima di mana dia mengatakan adalah kesilapan pada pihaknya. Maka, kes plaintif itu telah gagal (lihat ms 530H–I, 531A).

Per curiam:

Kepentingan yang akan diletakkan ke atas pernyataan kepercayaan seseorang dalam afidavit yang berdasarkan punca dan alasan selain daripada pengetahuan deponen akan bergantung ke atas sifat punca dan alasan itu. Punca yang asal akan dipentingkan lebih daripada punca perantaraan, dan di mana punca asal diketahui ia mesti dikenalpasti. Ini tidak bermakna bahawa punca perantaraan tidak

boleh dirujuk atau digunakan sebagai alasan. Akihirnya, ia adalah untuk mahkamah mempertimbangkan sama ada pemohon telah membuktikan kesnya untuk relief interlokutori yang dipohon itu (lihat ms 532E–F; *Deutsche Ruckversicherung AG v Walbrook Insurance Co Ltd* [1994] 4 All ER 181 diikut).]

[*Editorial Note*: The plaintiff has appealed to the Court of Appeal vide Civil Appeal No J–02–128–96.]

Notes

For cases on application of interlocutory injunctions, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1613–1615.

Cases referred to

American Cyanamid Co v Ethicon [1975] 1 All ER 504
Associated Newspapers Group v Insert Media Ltd [1988] 2 All ER 420
Cayne & Anor v Global Natural Resources Plc [1984] 1 All ER 225
Cheng Hang Guan & Ors v Perumahan Farlim (Penang) Sdn Bhd & Ors [1988] 3 MLJ 90
Deutsche Ruckversicherung AG v Walbrook Insurance Co Ltd [1994] 4 All ER 181
Eng Mee Yong & Ors v Letchumanan, V [1979] 2 MLJ 212
Fellowes & Son v Fisher [1975] 2 All ER 829
Government of Malaysia v Lim Kit Siang [1988] 2 MLJ 12
Hock Hua Bank Bhd v Leong Yew Chin [1987] 1 MLJ 230
Hong Kong Vegetable Oil Co Ltd v Malin Sirinaga Wicker & Ors [1978] 2 MLJ 13
Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors [1995] 1 MLJ 193
Lian Keow Bhd & Anor v Overseas Credit Finance (M) Bhd & Ors [1982] 2 MLJ 162
Mohamed Zainuddin bin Puteh v Yap Chee Seng [1978] 1 MLJ 40
Nocton v Lord Ashburton [1914] AC 932
RCA Sdn Bhd v Pekerja-Pekerja RCA Sdn Bhd & Ors [1991] 1 MLJ 309
Syed Kechik bin Syed Mohamed, Datuk v Yeh Pao Tzu, Datuk & Ors [1977] 1 MLJ 56
Tengku Jaafar bin Tengku Ahmad v Karpal Singh [1993] 3 MLJ 156

Legislation referred to

Contracts Act 1950 s 28
National Land Code 1965 s 327
Rules of the High Court 1980 O 29, O 41 r 5(2)
Specific Relief Act 1950 s 55

Joseph Singaram Pillay (*JS Pillay & Co*) for the plaintiff.
Oh Chong Ghee (*Shafee & Co*) for the first defendant.
M Puravalen (*Kumar Jaspal Quah & Aishah*) for the second, third, fourth and fifth defendants.

Abdul Malik Ishak J: On 19 August 1995, when the summons in chambers ('encl 4') supported by the affidavit of Sarkawi bin Sadijo ('Sarkawi') affirmed on 26 July 1995 ('encl 4A') came up for hearing, all the parties agreed that the matter be adjourned as the additional affidavits need to be filed. All the parties also agreed that pending the hearing of encls 4 and 4A, the status quo of the parties be maintained and, accordingly, this was ordered by this court. Between 19 August 1995 to 2 February 1996, there were numerous applications by the parties for adjournments until the matter was finally disposed of on 2 February 1996; where on that date encl 4 was struck off with costs and the damages were ordered to be assessed by the senior assistant registrar.

Enclosure 4 was an application by the plaintiff for the following prayers:

(i) injunksi untuk menghalang defendan pertama sama ada melalui diri sendiri atau pengkhidmat, ejen, kontraktor, pengkongsi mereka daripada membuat perjanjian dengan defendan kedua, ketiga, keempat dan kelima untuk merakamkan lagu-lagu dan/atau untuk mengadakan sebarang persembahan awam;

(ii) injunksi untuk menghalang defendan pertama sama ada melalui diri sendiri atau pengkhidmat, ejen, kontraktor, pengkongsi mereka daripada menggunakan rakaman asal lagu-lagu yang dibuat oleh kumpulan 'Exist' bertujuan untuk tujuan penerbitan semula rakaman tersebut di Malaysia atau negara lain;

(iii) injunksi untuk menghalang defendan pertama sama ada melalui diri sendiri atau pengkhidmat, ejen, kontraktor, pengkongsi mereka daripada menjual, memberi atau dengan apa cara daripada menjual, memberi atau dengan apa cara sekali mengedarkan apa jua terbitan semula rakaman lagu-lagu asal yang dirakamkan oleh kumpulan 'Exist'; dan

(iv) injunksi untuk menghalang defendan kedua, ketiga, keempat dan kelima atau mana-mana satu daripada atau beberapa orang dari mereka, daripada membuat sebarang perjanjian dengan mana-mana pihak untuk rakaman muzik di Malaysia atau negara-negara lain.

2 Bahawa kos permohonan ini menjadi kos dalam kausa.

Sarkawi affirmed, as adverted to earlier, an affidavit in encl 4A where he deposed that in early 1991 he and his advisers handpicked the second, third, fourth and fifth defendants for the purpose of establishing a musical group known as 'Exist'. Towards this end, written agreements were made between the plaintiff and the second, third and fourth defendants on 25 August 1992, and between the plaintiff and the fifth defendant on 28 April 1993. By these written agreements, the second, third, fourth and fifth defendants as musicians, singers and performers who were selected, groomed and promoted as a group by the plaintiff, agreed, inter alia, to bind themselves exclusively to the plaintiff to make sound recordings of music works by the plaintiff for a period of five years. By an agreement dated 1 June 1992 between the plaintiff and the first defendant ('the distribution agreement'), the plaintiff appointed the first defendant to make reproductions from the original sound recordings of songs by the group 'Exist' and to distribute the reproductions in the form of cassettes and compact discs by way of sales in Malaysia, Singapore and Indonesia. I pause here to note that even though the distribution agreement between the plaintiff and the first defendant was exhibited and marked as exh 'B', yet

the plaintiff, for reasons best known to him, did not exhibit the written agreements entered between the plaintiff and the second, third, fourth and fifth defendants. Sarkawi affirmed two more additional affidavits on 26 January 1996 ('encls 18 and 19'), barely a few days before the hearing of encl 4, yet he failed to avail himself of the opportunity to exhibit the written agreements entered between the plaintiff and the second, third, fourth and fifth defendants. It was said that the plaintiff established a fan club for 'Exist' to project the image of the group among its fans and, for this purpose, the plaintiff had spent about RM95,204.68. It was further said that the establishment of the fan club was with the concurrence of the second, third, fourth and fifth defendants. It was averred that the plaintiff had organized several shows in several towns within Malaysia to project 'Exist' and to make the group popular among Malaysians. But somehow, despite all these, it was said that the first defendant in a manipulative manner influenced the second, third, fourth and fifth defendants to leave the plaintiff. One Aziz Bakar, the servant or agent of the first defendant, was said to have exerted his influence and had urged the second, third, fourth and fifth defendants and another member of the 'Exist' group by the name of Mohd Ali bin Kamaruddin to obtain for the first defendant two songs from a master recording made by 'Exist' pioneered by the plaintiff. It was said that Aziz Bakar, in his capacity as the servant or agent of the first defendant, made not only monetary advances of RM1,730 each to the second, third, fourth and fifth defendants to maintain and sustain them but also arranged for suitable accommodation in Kuala Lumpur with the rentals and other outgoings taken care of by the first defendant for their benefit and use. Aziz Bakar also promised that the first defendant would pay a sum of RM75,000 to the members of the 'Exist' group once they signed agreements with the first defendant. The 'surat akuan' of Mohd Ali bin Kamaruddin was exhibited as exh 'C' and this was heavily relied upon by Mr JS Pillay, learned counsel for the plaintiff, in the course of his submission before me. As a result of the conspiracy hatched by the first defendant, it was said that the second, third, fourth and fifth defendants failed to honour, since November 1994, the terms of the written agreements entered between them and the plaintiff. Consequently, the plaintiff incurred loss and damage. The conspiracy between the defendants have tarnished the good name and reputation of the plaintiff in the music industry. Put bluntly, the plaintiff was said to be an object of ridicule in the Malaysian musical world. Sarkawi averred further in his affidavit that he was told by En Muhamad Abdul Rahim, a personality who has connections in the music industry in Malaysia, to the effect that the first defendant would be launching a new album of the second, third, fourth and fifth defendants. Launching a new album of this nature was said to be detrimental to the plaintiff as it would not only curtail the plaintiff's fortune but also seriously impede the plaintiff's company. In that event, it was said that damages could not remedy the loss sustained by the plaintiff. For these reasons, the plaintiff prayed for an order in terms of encl 4.

A B C D E F G H I

Aziz Bakar, the general manager of the first defendant, affirmed an affidavit dated 22 September 1995 ('encl 13') and there in reference to encls 4 and 4A, he deposed that the plaintiff was deriving more benefit from the existence of the group 'Exist' than the group members themselves. Aziz Bakar denied the contents of paras 6 and 7 of encl 4A and he categorically stated that:

(a) Sometime in November 1994, he was approached by the second, third, fourth and fifth defendants and one Mohd Ali bin Kamaruddin ('the group') when the group indicated to him that they were not satisfied with the plaintiff in their professional relationship and had repudiated their contract with the plaintiff and that they wanted to leave the plaintiff's stable.

(b) Amongst the complaints the group had against the plaintiff were that the plaintiff was not treating the group well and was taking advantage of the group and was not paying what were due to the group and deriving more benefit for himself and his company than for the group.

(c) He advised the group to think carefully about the matter and to attempt to resolve the matter with the plaintiff.

(d) The group met him a few days later, after having apparently thought about the matter, and they were steadfast in their desire to leave the plaintiff. He then advised the group to seek legal advice on the matter.

(e) Upon obtaining legal advice, the group was still adamant in their desire to leave the plaintiff and expressed their intention to join the first defendant.

(f) He said that neither he nor the first defendant induced the group to leave the plaintiff, and that neither he nor the first defendant induced the group to breach the contract with the plaintiff, and, further that when he met the group, the group had already repudiated their contract with the plaintiff.

(g) He denied that there was any conspiracy or agreement of any nature whatsoever between the first defendant, himself and the group as against the plaintiff so as to induce the group to breach the contract with the plaintiff.

(h) He denied categorically that there was any attempt by him to persuade the fifth defendant and Mohd Ali bin Kamaruddin to pilfer two songs from an earlier recording by the 'Exist' group made with the plaintiff. He averred that it was the suggestion of Mohd Ali bin Kamaruddin and the other group members to include the two songs in the collection album entitled '*Dulu dan Sekarang*' as they did not want the songs to go to waste in the event the two songs cannot subsequently be released for any reasons whatsoever and they themselves offered to obtain the two songs. However, he said that this suggestion was aborted after some legal advice.

(i) The first defendant had given some money to the members of the group to help them as they were not receiving any assistance, financial or otherwise, from the plaintiff at that time as they have parted company with the plaintiff.

(j) He denied that he and the first defendant or either one of them had provided the group with accommodation in Kuala Lumpur rent free and free from other outgoings as alleged. He also denied that he or the first defendant had promised the group members that a sum of RM75,000 would be paid to each of them when they signed up with the first defendant. Since the first defendant had not made up its mind whether it wanted to sign up the group or otherwise and, if so, on what

terms, he said that it was next to impossible for him to make any such promise to the group.

(k) He was advised to say by the second, third, fourth and fifth defendants that it was the plaintiff who did not keep to his bargain and the group had merely repudiated the contract in consequence thereof.

(l) Neither he nor the first defendant was responsible for the group's decision to repudiate their contract with the plaintiff and not to return to the plaintiff. On the contrary, he said that he even went to the extent of advising the group to think carefully about the matter with a view to resolving the matter.

Aziz Bakar further denied para 8 of encl 4A and repeated his averments in the preceding paragraphs of his affidavit in encl 13. He too denied para 9 of encl 4A and added that even if it was true that the first defendant would be launching a new album for the second, third, fourth and fifth defendants there was no basis in law for the plaintiff to stop as there was neither conspiracy nor inducement by the first defendant or himself to the group to breach the contract between the plaintiff and the group. It was finally deposed by Aziz Bakar that the balance of convenience lies in favour of the defendants so that the injunction sought for by the plaintiff ought not to be granted.

The fourth defendant affirmed an affidavit dated 26 October 1995 on behalf of himself and that of the second, third and fifth defendants. In that affidavit, the fourth defendant averred that he and the second, third and fifth defendants ('the group') had entered into written agreements with the plaintiff by reason of the misrepresentations made by the plaintiff. It seems that the plaintiff had misrepresented that the written agreements were fair to all the parties and were for the benefit of the group. It was averred that the written agreements contained terms that were, inter alia, adverse to the group in that:

(a) the terms of the written agreements were unreasonable;

(b) the option to extend the duration of the written agreements were exercisable without the consent of the group;

(c) there were no terms provided for re-negotiation of the royalties payable upon exercise of the option;

(d) there were terms prohibiting the group from entering into contracts with other companies after the expiration of the written agreements and this was said to amount to a restraint of trade; and

(e) the totality of the terms of the written agreements amounted to an 'unconscionable' or manifest disadvantage to the group.

In strong language, the fourth defendant deposed that he was advised by his solicitors and verily believed that although the plaintiff grounded his claim against the group individually, yet the plaintiff sought to restrain the use of the name of the group which has no legal status and, consequently, it was said that the plaintiff's application was misconceived in law as it was contrary to s 28 of the Contracts Act 1950, and, also in fact. The group was said to have been unduly influenced into entering the written agreements by reason of the absence of independent legal advice. It was deposed that subsequent to the execution of the written agreements, the plaintiff had

failed to comply with the requirements of the terms of the written agreements as pleaded in the statement of defence of the group. It is instructive to mention that the plaintiff had filed their writ enclosing the statement of claim on 26 July 1995 as reflected in encl 2. The first defendant's statement of defence which was dated 22 September 1995 was filed on 25 September 1995 and this is reflected in encl 14. The group's statement of defence was filed on 30 November 1995 as reflected in encl 15. Reverting back to the fourth defendant's affidavit, it was averred that the group proceeded to repudiate the written agreements during a meeting with the plaintiff company's representatives, agents and/or servants sometimes in December 1994. It was said that the plaintiff, at all material times, had, inter alia:

(a) failed to render full and proper accounts of the income of the group;

(b) made unlawful deductions of monies due and owing to the group;

(c) made irregular payments of monies thereby rendering the livelihoods of the group insecure;

(d) failed to account for monies received pursuant to merchandising of the group as an entity;

(e) physically assaulted the fourth defendant and generally treated the group in a humiliating manner in public places; and

(f) utilized monies received from the first defendant which was meant to promote the group for the plaintiff's own purpose.

It was for these reasons that the group decided to repudiate the written agreements with the plaintiff. As if in support of the first defendant, the fourth defendant averred that, at all material times, the first defendant had not induced the group to breach the written agreements with the plaintiff. It was categorically stated that the first defendant had advised the group to attempt to resolve the differences with the plaintiff. In regard to the allegation that the first defendant had directed the group to steal the two songs from an earlier recording of the group by the plaintiff, it was averred that the group 'Exist' did not have a legal personality and that the copyright in the two songs were vested individually with the defendants. It was said that the group had sought financial assistance from the first defendant as the group had no means of income.

In regard to the allegations by the plaintiff that the first defendant had promised vast sums of money and free accommodation, it was said that as a respectable international company the first defendant would be required to adhere to regular corporate practices and not indulge in hand outs of such magnanimous gestures especially as it involved a practically unknown group like the group itself. It was the fourth defendant's stand that the 'surat akuan' of Mohd Ali bin Kamaruddin was not admissible in law. Finally, it was deposed that:

(a) the plaintiff's application in encl 4 was misconceived in law by reason of the provisions of s 55 of the Specific Relief Act 1950;

(b) the Rules of the High Court 1980 ('the RHC'), particularly O 29 had not been complied with; and

(c) there was no undertaking as to damages by the plaintiff.

Consequently, for these reasons the fourth defendant prayed that the

plaintiff's application be dismissed with costs.

Aziz Bakar affirmed another affidavit ('encl 20') on 31 January 1996 and there he briefly stated, inter alia:

(a) that the group 'Exist' had repudiated the contract with the plaintiff;

(b) that he denied that he or the first defendant had influenced the group 'Exist' to breach the contract with the plaintiff and on this score he agreed with what was adverted to by the fourth defendant in his affidavit as shown in encl 16 and as adverted in the earlier part of this judgment; and

(c) that the 'surat akuan' of Mohd Ali bin Kamaruddin was inadmissible in evidence.

The fourth defendant too affirmed a further affidavit in encl 21 on 31 January 1996 on behalf of himself and that of the second, third and fifth defendants where he denied all the allegations of the plaintiff as reflected in encl 4 therein.

Sarkawi affirmed two more affidavits in the nature of replies in encls 18 and 19 and both were dated 26 January 1996. These additional affidavits were quite voluminous as several documents on vouchers and bank slips were exhibited and, of pertinence, Sarkawi finally gave an undertaking as to damages.

I have purposely examined in some detail the affidavits of all the parties to show that the parties have endeavoured to lay on the table all their cards for me to peruse and deliberate. At the end of the day, it is for me to decide whether the injunction that was granted on 19 August 1995 so as to maintain the status quo of the parties then, pending the disposal of encl 4, should be maintained or otherwise.

24 *Halsbury's Laws of England* (4th Ed) at p 511 defines an injunction as 'a judicial remedy by which a person is ordered to refrain from doing or to do a particular act or thing'. Injunctions may be classified as 'interlocutory' or 'final'. *Spry on Equitable Remedies* (3rd Ed) at p 312 puts it rather well when he says:

> They may be classified as interlocutory or interim injunctions, on the one hand, where the order itself is expressed to have effect only until a further hearing takes place or until a named day or else contains some similar limitation, and perpetual injunctions on the other hand, where the order is not so expressed or limited.

Perhaps the best description of an interlocutory or perpetual injunction is found in 24 *Halsbury's Laws of England* (4th Ed) at p 512 where it is stated that:

> The object of an interlocutory or interim injunction is to preserve matters pending the trial of matters in dispute ...

And in the same textbook at p 511, it describes a perpetual injunction as 'a final determination of the rights of the parties, and is permanent to prevent infringement of those rights and obviate the necessity of bringing action after action in respect of such infringement'.

In 1975, Lord Denning had occasion to comment in *Fellowes & Son v Fisher* [1975] 2 All ER 829 especially at p 833g, that nearly all cases (it

A was said 99 out of 100) where interlocutory injunctions were granted, do not go for trial. This seems to be the situation in Malaysia as adverted to by Edgar Joseph Jr J (now FCJ) in *Cheng Hang Guan & Ors v Perumahan Farlim (Penang) Sdn Bhd & Ors* [1988] 3 MLJ 90 especially at p 93.

All said and done, it is the practice of the courts to subject an B application for interlocutory injunction to a series of tests as propounded by Lord Diplock in the case of *American Cyanamid Co v Ethicon* [1975] 1 All ER 504. To summarize, the *American Cyanamid* principles require the applicant to show that:

(1) there is a serious question to be tried;

C (2) if the applicant were to succeed at the trial, damages would not be an adequate compensation for his loss;

(3) the balance of convenience lies in his favour; and

(4) there are special circumstances in his favour or, for that matter, no special circumstances in favour of the respondent.

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Hashim Yeop A Sani J (as he then was) in *Mohamed Zainuddin bin Puteh v Yap Chee Seng* [1978] 1 MLJ 40 in lucid terms neatly summarized the approach in this way at p 42:

> Firstly, to discover whether the plaintiff's case is frivolous or vexatious. If it is not, then to decide in whose favour the balance of convenience lies. If these E factors are evenly balanced it may not be improper for the court to take into account any tipping in the balance as revealed by affidavits. ... Secondly, if the plaintiffs were to succeed at the trial, whether they would be adequately compensated for the interim continuance of the defendant's activities. Conversely is the question that if the defendants were to succeed at the trial, whether they would be adequately compensated for the interim restriction on F their activities which the grant of an interlocutory injunction would have imposed. The judge then considers the balance of convenience, and if the relevant factors were evenly balanced the court should grant an interlocutory injunction which would maintain the status quo. It is said that at that stage the court is not justified in embarking upon anything resembling a trial of the action upon conflicting affidavits.

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It is germane to mention that the *American Cyanamid* principles have readily been applied in *Hong Kong Vegetable Oil Co Ltd v Malin Sirinaga Wicker & Ors* [1978] 2 MLJ 13; *Lian Keow Bhd & Anor v Overseas Credit Finance (M) Bhd & Ors* [1982] 2 MLJ 162; and *Datuk Syed Kechik bin Syed Mohamed v Datuk Yeh Pao Tzu & Ors* [1977] 1 MLJ 56. Even the Privy H Council in *Eng Mee Yong & Ors v V Letchumanan* [1979] 2 MLJ 212 applied the *American Cyanamid* principles.

Serious question to be tried

To recapitulate, the plaintiff here applied to injunct the first defendant I from entering into a contract with the second, third, fourth and fifth defendants until the disposal of the present case by way of a hearing and, also as against the first, second, third, fourth and fifth defendants for breaching the contract with the plaintiff. Mr JS Pillay argued that all the affidavits filed by the parties as adverted to in the early part of this judgment show a conflict of evidence which could only be resolved through a full fledged trial. He argued that the affidavits of Musa bin Radhi in encls

16 and 21 have raised contentious points like misrepresentation, unconscionable contract, restraint of trade, undue influence and misuse of funds and, consequently, it was sought to impress upon this court that these issues cannot be resolved by way of affidavit evidence but rather by way of an oral testimony. Reliance was placed on a passage appearing in the judgment of Lord Diplock in the case of *Eng Mee Yong & Ors v V Letchumanan* [1979] 2 MLJ 212 at p 216 where his Lordship said:

> Their Lordships must therefore turn to the evidence that was before the High Court on the hearing of the application, bearing in mind that if there appears to be any conflict of evidence which is not on the face of it implausible, such a conflict ought not to be disposed of on affidavit evidence only. It leaves a serious question to be tried.

The facts in *Eng Mee Yong & Ors v V Letchumanan* were that there the caveatees were the registered proprietors of land. The caveator was a purchaser of the land who had defaulted on the final payment of the purchase price on the date due under the terms of the written contract with the caveatees as vendors. On that default, the caveatees had served notice on the caveator terminating the contract for breach. The caveator started action for specific performance of the contract and entered a private caveat on the register to the extent of the whole share. The caveatees applied to the High Court under s 327 of the National Land Code 1965 ('the NLC') for the removal of the caveat. They supported their application by an affidavit exhibiting the written contract of sale. The caveator also filled an affidavit which contained assertions which conflicted with that of the caveatees and also with the terms of the written contract. Copies of the sale agreement and the letters terminating it were exhibited. The judge rejected the conflicting assertions made by the caveator as false, inadmissible and unlikely, and he ordered the removal of the caveat. The caveator appealed to the Federal Court which set aside the judge's order on the ground that once the caveator had asserted that the contract of sale had not been lawfully terminated and had begun an action for specific performance the judge was bound to leave the caveat on the register until the action has been disposed of. On the caveatees' appeal to the judicial committee, wherein the appeal was allowed, it was held that where an application to the court under s 327 of the NLC for the removal of a caveat was by the registered proprietor of the land, the caveator had to satisfy the court that there was a serious issue to be tried and, having done so, to show that on the balance of convenience, the status quo should be maintained until trial; that, although on such an application a conflict of evidence usually indicated that there was a serious issue to be tried and it was normally inappropriate to resolve that conflict on affidavit evidence, the judge was entitled to consider whether the plausibility of the evidence merited further investigation and, since the judge exercising his discretion judicially had found that the caveator's evidence lacked credibility, his decision that the caveator had not shown that there was a serious issue to be tried should not have been interfered with on appeal.

Admittedly the affidavits of Sarkawi were in sharp contrast to that of Musa bin Radhi just like the affidavit of the caveator in *Eng Mee Yong & Ors v V Letchumanan* which contained assertions that run counter not only to that of the caveatees but also with the terms of the written contract. That would be the extent of the similarities between the present case and

A that of *Eng Mee Yong & Ors v V Letchumanan.* But the crucial difference between the present case and that of *Eng Mee Yong & Ors v V Letchumanan* that is quite apparent is this: in the present case, Mr JS Pillay failed to exhibit the written agreements entered between the plaintiff and the second, third, fourth and fifth defendants, of which, I have more to say later.

B Next, it was argued by Mr JS Pillay that the plaintiff grounded their case not on mere inference but rather on actual facts and it was submitted that he stood on firmer ground than the plaintiffs in *Cayne & Anor v Global Natural Resources Plc* [1984] 1 All ER 225 (CA). A passage from the judgment of Eveleigh LJ, in *Cayne* at p 230 was relied upon and there his Lordship had this to say:

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> In the present case, if this is to be approached as one in which a triable issue has to be established, I myself would come to the conclusion that there was here a triable case. The plaintiffs' evidence, as I have said, clearly pointed to the inference which they asked the court to draw. Global's evidence, if true and accepted, of course clearly destroyed that inference. But the great question
> D that has to be determined is whether the defendants' case is accepted or not. The mere fact it is deposed to does not make it incontrovertible. Therefore, when the evidence is not accepted by the plaintiffs, I am left in doubt as to the outcome of the trial on that issue. If I am in doubt and if the issue seems to be one that is not frivolous, in other words is one for which there is supporting material, then I would conclude that there is a triable issue. So on that point
> E I would respectfully disagree with the conclusion arrived at by the Vice-Chancellor.

Flowing from and relying on the case of *Cayne*, Mr JS Pillay argued that the breaches by all the defendants still subsisted and these breaches were not inferences but grounded on the distribution agreement that was exhibited
F between the plaintiff and the first defendant, on the one hand, and the written agreements between the plaintiff and the second to the fifth defendants that were not exhibited, on the other hand. Mr JS Pillay argued that he sought legal redress to stem the breaches that arose from the contracts between the parties in order to preserve the status quo of the parties pending the final outcome of the matter at the trial proper. It was
G strenously argued that the affidavits of Aziz Bakar in encls 13 and 20 contained mere denials of the allegations as put forward by the plaintiff and it was said that these denials were totally unsubstantiated and certainly would require evidence to be led at the trial. Heavy reliance was placed on the case of *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193 (CA) where Gopal Sri Ram JCA said at p 206:

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> To summarize, a judge hearing an application for an interlocutory injunction should undertake an inquiry along the following lines:
>
> (1) he must ask himself whether the totality of the facts presented before him discloses a bona fide serious issue to be tried. He must, when considering this question, bear in mind that the pleadings and evidence are incomplete
> I at that stage. Above all, he must refrain from making any determination on the merits of the claim or any defence to it. It is sufficient if he identifies with precision the issues raised on the joinder and decides whether these are serious enough to merit a trial. If he finds, upon a consideration of all the relevant material before him, including submissions of counsel, that no serious question is disclosed, that is an end of the matter and the relief is refused. On the other hand if he does find that

there are serious questions to be tried, he should move on to the next step of his inquiry; A

(2) having found that an issue has been disclosed that requires further investigation, he must consider where the justice of the case lies. In making his assessment, he must take into account all relevant matters, including the practical realities of the case before him. He must weigh the harm that the injunction would produce by its grant against the harm B that would result from its refusal. He is entitled to take into account, inter alia, the relative financial standing of the litigants before him. If after weighing all matters, he comes to the conclusion that the plaintiff would suffer greater injustice if relief is withheld, then he would be entitled to grant the injunction especially if he is satisfied that the plaintiff is in a financial position to meet his undertaking in damages. C Similarly, if he concludes that the defendant would suffer the greater injustice by the grant of an injunction, he would be entitled to refuse relief. Of course, cases may arise where the injustice to the plaintiff is so manifest that the judge would be entitled to dispense with the usual undertaking as the damages (see *Cheng Hang Guan & Ors v Perumahan Farlim (Penang) Sdn Bhd & Ors* [1988] 3 MLJ 90). Apart from such D cases, the judge is entitled to take into account the plaintiff's ability to meet his undertaking in damages should the suit fail, and, in appropriate cases, may require the plaintiff to secure his undertaking, for example, by providing a bank guarantee; and

(3) the judge must have in the forefront of his mind that the remedy that he is asked to administer is discretionary, intended to produce a just result E for the period between the date of the application and the trial proper and intended to maintain the status quo, an expression explained by Lord Diplock in *Garden Cottage Foods Ltd v Milk Marketing Board* [1984] AC 130; [1983] 2 All ER 770; [1983] 3 WLR 143 and applied in *Cheng Hang Guan*. It is a judicial discretion capable of correction on appeal. Accordingly, the judge would be entitled to take into account all F discretionary considerations, such as delay in the making of the application or any adequate alternative remedy that would satisfy the plaintiff's equity, such as an award of monetary compensation in the event he succeeds in establishing his claim at the trial. Any question going to the public interest may, and in appropriate cases should, be taken into account. A judge should briefly set out in his judgment the several G factors that weighed in his mind when arriving at his conclusion.

Applying *Keet Gerald Francis Noel John* to the fullest, it is my judgment after considering the totality of the facts presented through the affidavits that the plaintiff here, being the applicant who is asking for an interlocutory injunction, must first and foremost have a cause of action before I will grant H him any remedy. This is especially so when this court is asked to grant an interlocutory remedy without having the benefit of a full trial. I am acutely aware that the plaintiff is saying that in the event the plaintiff is denied the injunction sought for by him, he would suffer grave injustice as the first defendant being the alleged tortfeasor would enjoy the benefit of their tort and that the second, third, fourth and fifth defendants would continue I breaching the written agreements with impunity. With respect, if the plaintiff cannot show to this court that he has a valid cause of action his application must surely fail (see *RCA Sdn Bhd v Pekerja-Pekerja RCA Sdn Bhd & Ors* [1991] 1 MLJ 309; *Associated Newspapers Group v Insert Media Ltd* [1988] 2 All ER 420). On the other hand, if the plaintiff can show to this court that

A he has prima facie a valid cause of action, he need not go on to show that he will definitely succeed in that cause of action. He needs only to show that there is a serious question to be tried. In my judgment, when Lord Diplock uses the phrase 'a serious question to be tried' in the *American Cyanamid* case, he must have in mind that the court must be satisfied that the claim is not frivolous or vexatious. One must not forget what Rajah J said in *Hong* B *Kong Vegetable Oil Co Ltd v Malin Sirinaga Wicker & Ors* [1978] 2 MLJ 13 at p 15I:

> ... implicit in 'a serious question to be tried' is the question whether the action is properly conceived and whether all the proper, necessary and/or interested parties are before the court so that any order made by the court can C properly and effectively be implemented.

I venture to say that implicit in the phrase 'a serious question to be tried' the applicant must show that he has a valid cause of action. What is a cause of action? Syed Agil Barakbah SCJ (as he then was) in *Hock Hua Bank Bhd v Leong Yew Chin* [1987] 1 MLJ 230 (SC) defined it in this way at p 236:

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> A cause of action is simply a factual situation the existence of which entitles a plaintiff to obtain from the court a remedy against the defendant.

Salleh Abas LP (as he then was) observed in *Government of Malaysia v Lim Kit Siang* [1988] 2 MLJ 12 (SC) at p 19 that:

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> 'A cause of action' is a statement of facts alleging that a plaintiff's right, either at law or by statute, has, in some way or another, been adversely affected or prejudiced by the act of a defendant in an action. Lord Diplock in *Letang v Cooper* [1965] 1 QB 232 at p 242 defined 'a cause of action' to mean 'a factual situation, the existence of which entitles one person to obtain from the court a remedy against another person'. In my view, the factual situation F spoken of by Lord Diplock must consist of a statement alleging that, first, the respondent/plaintiff has a right either at law or by statute and that, secondly, such right has been affected or prejudicated by the appellant/defendant's act.

Mr Valen, learned counsel for the second, third, fourth and fifth defendants forcefully argued that nowhere has the plaintiff shown a cause of action G against his clients and, consequently, it was submitted that there was no evidence to determine whether the injunction could be applied for in the first place. It was impressed upon me that the very essence of what was asked for was not placed before this court in that the plaintiff did not exhibit the written agreements entered between the parties thereto — especially between the plaintiff and the first, second, third, fourth and fifth defendants. H An interesting factual situation was brought to my attention by Mr Valen. He drew my attention to exh A of encl 4A of Sarkawi's affidavit. That exh A showed that Jojo's Musical and Promotion House was registered on 2 January 1996 yet the 'perakuan pendaftaran' from the 'Pendaftar Perniagaan, Semenanjung Malaysia' bore the date 3 January 1995 with payment of I RM170 in the form of a compound fee. It was argued by Mr Valen that there was an attempt to back date the registration of the plaintiff's company to 3 January 1995. In sharp contrast was para 4 of the statement of claim as reflected in encl 2 where it was stated that the written agreements were entered between the plaintiff and the second, third, fourth and fifth defendants on 25 August 1992 and between the plaintiff and the fifth defendant on 28 April 1993. That being the case, it was submitted that the

plaintiff's company came into existence on 3 January 1995 yet they sought to sue on the written agreements dated 25 August 1992 and 28 April 1993. It was obvious, so submitted Mr Valen, that the plaintiff had no locus standi to sue the defendants. Before a party can sue in an action he must have locus standi. A party may have a cause of action but if he has no locus standi to initiate the action the court will, without hesitation, dismiss the action in limine. This seems to be the stand of the then Supreme Court in the case of the *Government of Malaysia v Lim Kit Siang*, where Salleh Abas LP (as he then was) speaking for the then Supreme Court lucidly remarked at p 20 that:

> Every legal system has a built-in mechanism to protect its judicial process from abuse by busybodies, cranks and other mischief-makers by insisting that a plaintiff should have a special interest in the proceedings which he institutes. This special interest is a nexus between him and the party against whom he brings his complaints to court and is known as 'locus standi'.

It is germane to mention here that the judgment of Idris Yusof J in *Tengku Jaafar bin Tengku Ahmad v Karpal Singh* [1993] 3 MLJ 156 on locus standi makes for interesting reading.

It is my judgment that on the facts as highlighted by Mr Valen, the plaintiff has no locus standi to pursue the matter against the defendants and, consequently, there is no bona fide serious issue to be tried.

Mr Valen launched yet another attack. He submitted that the plaintiff filed a suit against individuals (the second, third, fourth and fifth defendants) in encl 2, yet the plaintiff sought for an injunction against a group. It was argued that though prayer (iv) of encl 2 sought for an injunction against all the individuals stated therein yet it has the cumulative effect of seeking an injunction against a group. Finally, it was submitted that if the plaintiff cannot prove their case against the second, third, fourth and fifth defendants, in limine they cannot also prove their case against the first defendant.

Mr Oh Choong Ghee, learned counsel for the first defendant, adopted the submissions of Mr Valen and added that if there was no evidence against the second, third, fourth and fifth defendants then the question of the first defendant inducing or conspiring with the second, third, fourth and fifth defendants against the plaintiff do not arise at all. He then submitted that if the injunction cannot be issued against the second, third, fourth and fifth defendants, a fortiori it cannot even be issued against the first defendant.

I need, at this juncture, to consider whether on the totality of the facts a bona fide serious issue has been disclosed. Regrettably, I have to answer this question in the negative. It is quite obvious that I could not decide this issue because the very substratum of the plaintiff's case has not been exhibited in the plaintiff's affidavits. I am referring to the written agreements between the plaintiff and the second, third, fourth and fifth defendants. In fact, Mr JS Pillay realized towards the end of his submission that he had inadvertently omitted to exhibit the written agreements between the plaintiff and the second, third, fourth and fifth defendants. He said it was an oversight on his part. That being the case, out of his own admission, the plaintiff's case crumbled to the ground like a deck of cards. Even the allegations of inducement and conspiracy in the plaintiff's statement of

A claim in encl 2 in regard to the first defendant cannot be assessed in its totality in the absence of the written agreements between the plaintiff and the second, third, fourth and fifth defendants. Clearly it is through the negligence of Mr JS Pillay that the plaintiff was deprived of his right to obtain an injunction. Viscount Haldane LC in *Nocton v Lord Ashburton* B [1914] AC 932 observed at p 956 that:

> ... the solicitor contracts with his client to be skilful and careful. For failure to perform his obligation he may be made liable at law in contract or even in tort, for negligence in breach of a duty imposed on him. In the early history of the action of assumpsit this liability was indeed treated as one for tort.

C 44(1) *Halsbury's Laws of England* (4th Ed) at p 125 at para 152 under the category of liability for negligence contains a passage that is worth repeating. It is this:

> A solicitor holds himself out to his clients as having adequate skill and knowledge properly to conduct all business that he undertakes, whether contentious or non-contentious. He owes a duty to his client both in contract D and in tort, and he may be liable to a third person for the tort of negligence. Where the solicitor is in breach of his contractual duty to his client, or where he fails to use proper care and his client or a third person, where he owes a duty of care to that third person, suffers loss as a result, he is liable in damages even if the claim in negligence is for purely financial loss. The solicitor's contractual duties to his client may, in some instances, be continuing E duties, so that the limitation period runs from the date when the obligation becomes impossible of performance or when the client elects to treat the continued non-performance as a repudiation of the contract.

Be that as it may, since I have held that there was no serious question to be tried there was thus no necessity for me to go to the next step of inquiry as F outlined by Gopal Sri Ram JCA in *Keet Gerald Francis Noel John.*

En passant it is the duty of this court, if the second stage is proceeded upon which is not the case here, to not only consider whether damages will be an adequate remedy for the plaintiff but also to consider the adequacy of damages from the defendants' point of view and determine whether the G loss that may be suffered by the defendants during the same period will be adequately compensated by an award of damages made pursuant to the plaintiff's undertaking as to damages. Initially in encl 4A the plaintiff did not give an undertaking as to damages and this point was adverted to by the fourth defendant in his affidavit on behalf of himself and that of the second, third and fifth defendants in encl 16. The plaintiff quickly remedied H this in encls 18 and 19 where in his further affidavits he gave an undertaking as to damages. I cannot help but observe that this was an attempt at repairing the defect in encl 4A. I would have thought that an undertaking as to damages should have been incorporated in encl 4A from the very beginning and not done the way it is done in encls 18 and 19.

I Be that as it may, I must, however, put on record that I have also considered the statutory declaration of Mohd Ali bin Kamaruddin as it formed the basis of the plaintiff's case against the first defendant. That statutory declaration showed the steps which was said to be taken by the first defendant to induce the second, third, fourth and fifth defendants to breach their contract with the plaintiff. Order 41 r 5(2) of the RHC states

that an affidavit sworn for the purpose of being used in interlocutory proceedings may contain statements of information or belief with the sources and grounds thereof. In the recent judgment of the Queen's Bench Division of the Commercial Court in the case of *Deutsche Ruckversicherung AG v Walbrook Insurance Co Ltd & Ors* [1994] 4 All ER 181, Phillips J at p 191 had this to say:

> I agree with Peter Gibson J that the purpose of r 5 (2) (referring to the British Rules of the Supreme Court 1965 O 41 r 5(2)) is to enable a deponent to put before the court, frequently in circumstances of great urgency, facts which he is not able of his own knowledge to prove. Having regard to that purpose I cannot, with great respect, follow the judge in concluding that, at the interlocutory stage, a deponent must identify as the source of his information or belief an original source of evidence which will be admissible at the trial. The object of the rule militates against placing this restriction upon the natural meaning of its words. In a situation of urgency, a plaintiff may well not have time to identify or trace evidence which will be admissible at the trial. If he has learned of facts via an intermediate source which there is good reason to believe will, itself, have had access to primary sources of information, I can see no good reason for precluding the plaintiff from relying upon that intermediate source as a ground for seeking interlocutory relief. Perhaps the most important form of interlocutory relief is the injunction. It seems to me that the power of the court to grant an interlocutory injunction is one that should be flexible and not fettered by the technical rules of admissibility of evidence that apply at a trial.

The weight to be attached to a statement of belief in an affidavit that depends upon sources and grounds other than the knowledge of the deponent will, of course, depend upon the nature of those sources and grounds. An original source will normally carry much more weight than an intermediate source, and where original sources are known, they must be identified. But it does not follow that intermediate sources cannot be referred to or relied upon. Ultimately, it must be for the court to weigh all the material in order to decide whether the applicant has made out his case for the interlocutory relief sought.

At this interlocutory stage, I do not propose to examine the validity of the distribution agreement between the plaintiff and the first defendant nor do I need to examine the validity of the written agreements between the plaintiff and the second, third, fourth and fifth defendants as these would be done in the trial proper. As to whether the plaintiff would proceed for professional negligence against Mr JS Pillay is best left to the wisdom of the plaintiff himself. For my part, I struck off encl 4 with costs. Since the first defendant was prevented from producing albums and the second, third, fourth and fifth defendants were precluded from performing all these times, they rightly deserved damages. Consequently, I ordered that damages be assessed by the senior assistant registrar.

Application dismissed.

Reported by Ng Kian Pin